IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.222 of 1993

Decided on : December 7, 2007

State of H.P. **…Appellant.**

Versus

Pawan Singh **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General.

For the Respondent : M/s Bhuvnesh Sharma & Ramakant Sharma, Advocates.

Surjit Singh, Judge(Oral)

This appeal by the State is directed against the judgment of the Additional Sessions Judge whereby respondent Pawan Singh, who alongwith one Subhash Chand, has been acquitted of the charges under Sections 380 & 457 IPC, by accepting the appeal against the judgment of the trial Magistrate whereby the respondent was convicted of offences punishable under Sections 380 & 457 IPC, and his abovenamed accomplice was convicted for offence punishable under Section 411 IPC and the respondent was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/- for each of the two offences.

2. Respondent, alongwith four other persons, namely Tholu Ram, Kuldip Singh, Vjay Kumar and Subhash Chand, had been sent up for trial for offences punishable under Sections 457, 380, 411, 414

Whether reporters of the local papers may be allowed to see the judgment?

read with Section 34 IPC. Allegations against the respondent and his abovenamed four accomplices were that on the night intervening 15th and 16th March, 1988, the respondent and two of his accomplices, named Tholu Ram and Kuldip Singh, broke open the lock of the store of Electrical Sub Division, Ganoh, and stole ACR Conductor worth Rs.27,000/- to Rs.30,000/-.

3. During the course of investigation, the respondent was taken into custody by the police. He allegedly made a disclosure statement on 20th March, 1988, in the presence of PW-2 Vinod Mehta and PW-8 Jagjit Singh, that he and his accomplices Tholu Ram and Kuldip Singh had carried the stolen ACR Conductor in truck No.HIK-3779 from Kathal to Pathankot and sold the same to Subhash Chand, another accomplice of the respondent, for Rs.5000/-. The said disclosure statement was reduced into writing. Pursuant to that statement, police recovered 10 bundles of wire, which were identified by PW-2 Vinod Mehta to be the same that had been stolen from their aforesaid store. The recovered wire weighed five quintals. Vijay Kumar, another accomplice of the respondent, was allegedly driver of the truck when the stolen wire was carried.

4. Trial Magistrate believed the version of the prosecution, with regard to the making of the disclosure statement by the respondent leading to the recovery of 10 bundles of wire weighing five quintals from Subhash Chand, one of the accomplices of the respondent. Consequently, the trial Magistrate convicted and sentenced the respondent and his accomplice Subhash Chand, as aforesaid.

5. Both the respondent and his accomplice Subhash Chand went in appeal to the Sessions Court. Learned Additional Sessions

Judge, who heard the matter, accepted the appeal with the finding that the evidence of alleged disclosure statement of the respondent and the recovery of the wire, pursuant to that statement, was doubtful.

6. State filed two separate appeals. One against the present respondent and another against respondent's accomplice Subhash Chand. Subhash Chand is stated to have died during the pendency of the appeal. So, the appeal filed by the State against him (Subhash Chand), which was registered as Cr.A No.342 of 1993, abates.

7. We have perused the record and heard the learned Additional Advocate General.

8. We find contradictions in the evidence pertaining to the alleged disclosure statement of respondent Pawan Singh. Investigating Officer Dhian Singh Guleria, who appeared as PW-9, testified that the respondent was subjected to interrogation at 10 and he made the statement within 5-7 minutes of his interrogation and that thereafter around 11 he accompanied by witnesses, namely PW-2 Vinod Mehta and PW-8 Jagjit Singh, reached the shop of Subhash Chand at Pathankot. PW-9 Vinod Mehta testified that he went to the Police Station at 11 and it was thereafter that respondent Pawan Singh was interrogated for about 1½-2 hours and then he made the disclosure statement. As regards the time of recovery at Pathankot from deceased Subhash Chand, he stated that they reached Pathankot at 2 p.m. PW-8 Jagjit Singh stated that the statement was made by respondent Pawan Singh around 10 or 11. The zimini contradicts all the three witnesses, because in the zimini of the date it is recorded that PW-2 Vinod Mehta and PW-8 Jagjit Singh were associated at 7.30 a.m. and the interrogation of the respondent began immediately thereafter. PW-9

Dhian Singh Guleria has stated that within 5-7 minutes of his interrogation, the respondent made the disclosure statement.

9. It appears that the Investigating Officer was already in the know of the fact discovered, pursuant to the alleged statement of the respondent, under Section 27 of the Evidence Act. PW-9 Dhian Singh Guleria admitted that he came to know about the number of the truck, by which the wire was carried, on 19th March, 1988, whereas disclosure statement of the respondent is dated 20th March, 1988. He did not indicate how he came to know about the number of the truck on a day before the respondent made the disclosure statement that the wire had been carried in that truck to Pathankot.

10. In view of the abovestated position, we are not inclined to interfere with the judgment of acquittal passed by the Additional Sessions Judge, in appeal. Hence, the appeal is dismissed.

(Surjit Singh), J

December 7, 2007(sd) **(Surinder Singh), J**